

**No. 01-20-00004-CR & No. 01-20-00005-CR**

In the Court of Appeals for the  
First District of Texas at Houston

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
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CHRISTOPHER A. PRINE  
Clerk

**Ex parte**

**JOSEPH ERIC GOMEZ,**  
Applicant

On Appeal from Trial Court Case No. 1657519 and 1657521  
Before the 338th Judicial District Court of Harris County, Texas

**APPLICANT'S RESPONSE IN OPPOSITION TO  
STATE'S MOTION FOR EXTENSION  
OF TIME TO FILE APPELLATE BRIEF**

**TO THE HONORABLE COURT OF APPEALS:**

Comes now Joseph Eric Gomez, Applicant, by and through under-  
signed counsel, and submits the following response to the State's First  
Motion for Extension of Time to File Appellate Brief filed on February  
3, 2020.

1. Joseph Gomez has now been illegally detained and left sitting in  
the Harris County Jail for 80 days. 2 months and 19 days. Over

1,920 hours. Approximately 1,926 hours ago, he posted \$40,000 in surety bonds — bond amounts set by a neutral and detached magistrate after hearing probable cause and arguments from an attorney for the State and a public defender appointed to represent Applicant for that limited purpose — and was released from the Harris County Jail. He did not commit any new law violations. He did not violate any conditions of bond. He did exactly what was obligated of him: appear in the trial court at 9:30 a.m. that same morning. All he wanted was an opportunity to reset his case and then retain undersigned counsel to represent him against the criminal allegations of which he maintains his innocence. Instead, the trial court illegally revoked and raised his bonds and ordered him taken back into custody. Why? Because the trial court was unsatisfied with the bond amounts set by the magistrate and no other reason. No notice. No right to counsel of his own choosing. No enforcement of the Rules of Evidence. As a result, Joseph Gomez, a 27 year-old who has never spent more than a few days in jail for two minor drug arrests, has been illegally detained. He has

lost his job. He has lost out on a semester of college that he was planning to enroll in.

2. Before this Court acts on the State's motion for extension of time to file its brief, Applicant respectfully requests this Court to consider the following timeline showing what has taken place in the past 80 days:

- **Day 1** (November 15, 2019). The trial court illegally revokes Applicant's bonds totaling \$40,000 and raises them to a total of \$150,000 at a hearing with no notice, no right to counsel of his own choosing, and no enforcement of the Rules of Evidence, simply because the trial court is not satisfied with the bond amounts set by the magistrate.
- **Day 4** (November 18, 2019). The following business day, even though Applicant's case is not on the court's docket, counsel for Applicant appears before the trial court to object to the illegal revocation of Applicant's bond the Friday before and request that the court reinstate the bonds. The trial court considers the matter, denies the request, and suggests that Applicant file an

application for writ of habeas corpus. Undersigned counsel does exactly that later that day.

- **Day 7** (November 21, 2019). Undersigned counsel file a superseding application for writ of habeas corpus alleging more specific grounds for habeas relief. Undersigned counsel personally appear before the trial court to present it with a copy and request an immediate hearing. Despite Applicant requesting an earlier hearing date, the trial court schedules a hearing for December 10, 2019.
- **Day 25** (December 10, 2019). The trial court finally holds a hearing on Applicant's application for writ of habeas corpus and, after receiving evidence and hearing arguments, denies the application. That same day, Applicant file his Notice of Appeal and undersigned counsel begin making arrangements for the immediate preparation of the record, including filing a motion for an expedited record with the trial court.
- **Day 42** (December 27, 2019). Per Texas Rule of Appellate Procedure 31.1, the clerk's record and reporter's record are to be filed with this Court by this date. Despite constant communica-

tion between undersigned counsel and both the Harris County District Clerk's Office, Post Trial Division and the official court reporter, none of the records are filed by this date.

- **Day 49** (January 3, 2020). A week later, the clerk's record, including the notice of appeal, is finally transmitted to and received by this Court. Within the next four days, this Court receives the reporter's record and a supplemental clerk's record.
  - **Day 54** (January 8, 2020). **One day** after the complete record is filed with this Court, undersigned counsel files Applicant's brief with this Court.
  - **Day 60** (January 14, 2020). This Court issues a *sua sponte* order recognizing the filings made in this case and orders the State's brief to be filed in 20 days from the date of the order.
3. Despite having more than 20 days to review Applicant's brief and the record in this case, the State has not filed a responsive brief with this Court. Instead it asks for an additional *30 days* to prepare and file its brief — an additional 30 days in which Applicant, an individual presumed by law to be innocent of the alleged crimi-

nal wrongdoing must continue to remain illegally detained in the Harris County Jail.

4. In support of its request, the attorney for the State notes that he has been working on several other appellate matters. However, in two of those matters, the State has overcome the presumption of innocence, proven guilt of those defendants beyond a reasonable doubt, and obtained lengthy prison sentences against those individual defendants.<sup>1</sup> Another — *State of Texas v. Dennis Edward Gallian* — is a State’s appeal after the trial court there granted a motion for new trial; the Defendant there is legally being held in custody without bond having been previously convicted twice of separate felony offenses and having allegedly committed the charged felony of aggravated robbery using a weapon after having previously been convicted of a felony. In the last matter — *State of Texas v. Alfred Moliere* — the defendant there was convicted of misdemeanor assault of a family member and is currently out of custody on an appeal bond. Each one of these defendants are in

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<sup>1</sup> Happy Pham was convicted of murder and sentenced to life in prison. Ramon Torres, Jr. was convicted of aggravated sexual assault and sentenced to 60 years in prison.

distinctly different situations than Applicant. Setting out the unique circumstances presented in this case, the State could have requested extensions to file briefs in those other cases and completed its brief for this case within the designated time period but simply chose not to.

5. The Harris County District Attorney's Office has over 300 attorneys on its staff. One of those Assistant District Attorneys has previously testified in federal court, based on "her extensive experience with Harris County pretrial processes both as a criminal defense lawyer and as an Assistant District Attorney," that criminal defendants choose "to abandon valid defenses by pleading guilty . . . so they could get out of jail instead of remaining detained for the two or three weeks it would take even to raise those defenses." *O'Donnell v. Harris Cty., Texas*, 251 F. Supp. 3d 1052, 1107 (S.D. Tex. 2017), *aff'd as modified*, 882 F.3d 528 (5th Cir. 2018). The extended period which Applicant has been illegally detained unquestionably presents him with this pressure.
6. Permitting the State additional time to file its brief only adds to an already unreasonable amount of time for Applicant to be ille-

gally detained. More importantly, it flies in the face of the purpose of this appeal: “to do substantial justice to the parties” and to do so “at the earliest practicable time.” TEX. R. APP. P. 31.1 & 31.2.

Based on the foregoing, Applicant requests that this Court deny the State’s motion for extension of time and, pursuant to Texas Rule of Appellate Procedure 31, consider this matter immediately based “upon the law and the facts shown by the record.”

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on February 3, 2020.

/s/ T. Brent Mayr  
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